

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 41 OF THE MOUNTAIN VIEW CITY CODE TO PROVIDE A CREDIT FOR PUBLICLY ACCESSIBLE PRIVATE OPEN SPACE IN THE NORTH BAYSHORE PRECISE PLAN AREA

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 41, Section 41.11, of the Mountain View City Code is hereby amended to read as follows:

“SEC. 41.11. Credit.

a. **Private open space.** Where private open space is provided in a proposed residential development, a maximum credit of fifty (50) percent of the value of the land devoted to private open space that is eligible for credit may be given against the requirement of land dedication or fees in lieu thereof required by this chapter, if the following standards are met and it is in the public interest to do so.

1. **Standards.**

(a) Yards, court areas, setbacks, decorative landscape areas required with residential site design and other open areas required to be maintained by a precise plan, zoning and building ordinances and regulations shall not be included in the computation of such private open space.

(b) The private open space shall be devoted to active recreational uses, as defined below, and shall be wholly or partially owned and maintained by the future residents of the development. The private ownership and maintenance of the open space shall be restricted for said use by recorded written agreement, conveyance or restrictions subject to the review and approval of the city attorney.

(c) The space shall be reasonably adapted for use for recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location, and the developer must propose and agree to design and construct the necessary recreational and park facilities and improvements associated with each element of the private open space set forth below; said facilities and improvements shall be constructed prior to the issuance of an occupancy certificate for the units that are receiving the credit.

(d) Facilities proposed for the open space shall be in substantial compliance with the provisions of the open space section of the environmental chapter of the general plan.

(e) The open space must contain at least four (4) of the following seven (7) elements:

(1) Turfed play field: The play field shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities;

(2) Children's play apparatus area;

(3) Landscaped, park-like quiet area;

(4) Family picnic area;

(5) Game court area;

(6) Swimming pool;

(7) Recreation center buildings and grounds.

The combined minimum acreage for a facility is one (1.0) acre and shall be a single, contiguous unit of land.

(f) The shape and location of the open space shall provide the greatest utility possible to the greatest number of residents of the development for which credit is sought. If limited access recreation areas are proposed, their credit value can only be applied against the park fee obligation generated by those residents with access to the said recreation area.

(g) Irregularly shaped pieces of property of less than optimum utility or burdened by topographic considerations that render them unsuitable for active recreational uses shall not be eligible for credit.

b. **North Bayshore Precise Plan Area and publicly accessible private open space.** Where publicly accessible private open space is provided in a proposed residential or mixed-use residential development within the North Bayshore Precise Plan Area, a maximum credit of seventy-five (75) percent of the value of the land devoted to publicly accessible private open space that is eligible for credit may be given against the requirement of land dedication or fees in lieu thereof required by this chapter, if the following standards are met and it is in the public interest to do so.

1. **Standards.**

(a) The publicly accessible private open space shall be devoted to active and passive recreational uses, as defined below, and shall be wholly or partially owned and maintained by the owner (in the case of a rental development) or Homeowner Association (in the case of an ownership development) of the development.

(b) The right of the public to access and utilize the open space shall be recorded against the property either by an easement, covenant or restrictions subject to the review and approval of the city attorney, and such right shall run with the land in perpetuity.

(c) Improvements associated with any of the elements of the publicly accessible private open space set forth above shall be constructed prior to the issuance of a Certificate of Occupancy for the units that are receiving the credit and shall be in substantial compliance with the provisions of the Parks, Open Space and Community Facilities chapter of the general plan.

(d) The publicly accessible open space must contain at least three (3) of the following five (5) elements:

(1) Turfed play field: The play field shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities;

(2) Landscaped, park-like quiet area;

(3) Family picnic area;

(4) Game court area; and

(5) Children's playground or play structure.

(e) The size of the publicly accessible open space shall be a minimum of one (1) acre and shall be a single, contiguous unit of land.

(f) The shape and location of the open space for which credit is sought shall provide the greatest utility and accessibility possible to the greatest number of residents of the development and the public.

(g) Irregularly shaped pieces of property of less than optimum utility, accessibility or burdened by topographic considerations that render them unsuitable for active recreational uses shall not be eligible for credit.

(h) The publicly accessible open space complies with the city's guidelines for restroom buildings in city parks.

(i) The publicly accessible open space includes signage that is visible from the public right-of-way and is approved by the community services department.

(j) The open space shall be publicly accessible during the city's park hours.

(k) The local school strategy will be a factor considered when determining any credit.

2. **Alternate proposals.**

As an alternative to the publicly accessible private open space credit standards listed in subsection (b)1, developers of residential and mixed-use residential developments within the North Bayshore Precise Plan Area may submit a request for a credit for providing publicly accessible open space and elements other than those listed in subsection (b)1. Such requests may be granted at the sole discretion of the city council, if the city council makes a finding that such alternative will further the goal of providing publicly accessible private open space in the North Bayshore Precise Plan Area and the request provides benefits equal to or greater than the criteria in subsection (b)(1).

c. **Historic resource.** Where a historic resource is preserved or rehabilitated as part of a residential development, a credit may be given against the requirement of land dedication or fees in lieu due on the residential development, required by this chapter, up to a maximum of fifty (50) percent of the value of the land dedication or fees in lieu thereof required by this chapter. This section may also apply to the relocation of an historic resource provided it is preserved or rehabilitated in conjunction with the relocation. The developer, as part of the application for a credit, shall file an application for a historic preservation permit pursuant to Sec. 36.54.45 et seq. Credit may be awarded pursuant to subsection d. of this section when it is in the public interest to do so.

d. **Affordable housing.** Because affordable housing is an important community need, the affordable housing units included in new development projects shall not be included in the total number of dwelling units used to calculate the park land dedication requirement set forth in Sec. 41.5 through 41.9. This exemption shall not

include affordable housing units provided pursuant to density bonus law (under state law and as set forth in Chapter 36, Article IV, Division 11 of the city code).

e. **Process.**

1. To request a credit pursuant to this section, the developer shall submit a written request specifying the credit being sought, in conjunction with the development or building permit applications submitted.

2. The credit may be awarded when the public works director, community development director, community services director, subdivision committee or city council, as appropriate to the application, makes written findings that the applicable requirements are met. A credit for publicly accessible private open space may only be granted by the city council.

3. The timing for the credit determination depends on the type of permits and entitlements sought. Upon their request, the developer(s) will be advised as part of the application process as to when the determination will be made.

4. Only one (1) open space credit may be awarded for a project; either private open space or publicly accessible private open space.”

Section 2. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. This ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3)

(the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

PdC/3/ORD
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